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19 ALASKA AIRLINES, INC.

20 UNITED STATES DISTRICT COURT

21 DISTRICT OF NEVADA

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23 R. GINENA, SABRINA KOBERT, M. MAGDY
24 H. RASIKH, M. SAMIR MANSOUR, AZZA
25 EID, NAZMI M. NAZMI, and HEBA NAZMI,

26 Plaintiffs,

27 v.

28 ALASKA AIRLINES, INC.,

Defendant.

Case No. CV-S-04-1304-MMD-CWH

**UNDISPUTED PROPOSED JURY
INSTRUCTIONS [JOINT FILING]**

Judge: Honorable Miranda M. Du

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2. CLAIMS AND DEFENSES

To help you follow the evidence, I will give you a brief summary of the positions of the parties:

[INSERT STATEMENT OF THE CASE]

Authority: 9th Cir. Civ. Jury Inst. 1.2 (2007)

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

JUDGE OF THE DISTRICT COURT

3. WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the lawyers have agreed.

Authority: 9th Cir. Civ. Jury Inst. 1.6 (2007)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

4. WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

- (1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they will say in their opening statements and closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.
- (2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.
- (3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition, sometimes testimony and exhibits are received only for a limited purpose; when I give a limiting instruction, you must follow it.
- (4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Authority: 9th Cir. Civ. Jury Inst. 1.7 (2007)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

5. EVIDENCE FOR LIMITED PURPOSE

Some evidence may be admitted for a limited purpose only.

When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

Authority: 9th Cir. Civ. Jury Inst. 1.8 (2007)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

1 **6. DIRECT AND CIRCUMSTANTIAL EVIDENCE**

2 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as
3 testimony by a witness about what that witness personally saw or heard or did. Circumstantial
4 evidence is proof of one or more facts from which you could find another fact. You should
5 consider both kinds of evidence. The law makes no distinction between the weight to be given to
6 either direct or circumstantial evidence. It is for you to decide how much weight to give to any
7 evidence.

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14 **Authority: 9th Cir. Civ. Jury Inst. 1.9 (2007)**

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16 Given as Requested: _____

17 Given as Modified: _____

18 Refused: _____

19 Withdrawn: _____

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22 JUDGE OF THE DISTRICT COURT
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8. CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness's testimony;
- (6) the reasonableness of the witness's testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

Authority: 9th Cir. Civ. Jury Inst. 1.11 (2007); CACI 107

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

1 require the entire trial process to start over. If any juror is exposed to any outside information,
2 please notify the court immediately.

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14 **Authority: 9th Cir. Civ. Jury Inst. 1.12 (2007)**

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16 Given as Requested: _____

17 Given as Modified: _____

18 Refused: _____

19 Withdrawn: _____

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JUDGE OF THE DISTRICT COURT
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10. NO TRANSCRIPT AVAILABLE TO JURY

During deliberations, you will have to make your decision based on what you recall of the evidence. You will not have a transcript of the trial. I urge you to pay close attention to the testimony as it is given.

If at any time you cannot hear or see the testimony, evidence, questions or arguments, let me know so that I can correct the problem.

Authority: 9th Cir. Civ. Jury Inst. 1.13 (2007)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

11. TAKING NOTES

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you. When you leave, your notes should be left in the jury room. No one will read your notes. They will be destroyed at the conclusion of the case.

Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

Authority: 9th Cir. Civ. Jury Inst. 1.14 (2007)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

12. OUTLINE OF TRIAL

Trials proceed in the following way: First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The plaintiff will then present evidence, and counsel for the defendant may cross-examine. Then the defendant may present evidence, and counsel for the plaintiff may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

Authority: 9th Cir. Civ. Jury Inst. 1.19 (2007)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

**14. JURY TO BE GUIDED BY OFFICIAL ENGLISH
TRANSLATION/INTERPRETATION**

Languages other than English may be used during this trial.

The evidence to be considered by you is only that provided through the official court [interpreters] [translators]. Although some of you may know [*language to be used*], it is important that all jurors consider the same evidence. Therefore, you must accept the English [interpretation] [translation]. You must disregard any different meaning.

Authority: 9th Cir. Civ. Jury Inst. 1.16 (2007)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

15. USE OF INTERPRETERS IN COURT

You must not make any assumptions about a witness or a party based solely upon the use of an interpreter to assist that witness or party.

Authority: 9th Cir. Civ. Jury Inst. 1.17 (2007)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

18. STIPULATIONS OF FACT

The parties have agreed to certain facts that will be read to you. You should therefore treat these facts as having been proved:

[INSERT STIPULATIONS OF FACT.]

Authority: 9th Cir. Civ. Jury Inst. 2.2 (2007)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded. [When a person is unavailable to testify at trial, the deposition of that person may be used at the trial.]

[Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.]

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

20. IMPEACHMENT EVIDENCE—WITNESS

The evidence that a witness [e.g., has been convicted of a crime, lied under oath on a prior occasion, etc.] may be considered, along with all other evidence, in deciding whether or not to believe the witness and how much weight to give to the testimony of the witness and for no other purpose.

Authority: 9th Cir. Civ. Jury Inst. 2.8 (2007)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

22. REQUESTS FOR ADMISSIONS

As permitted by law, the parties served upon each other a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the parties or which the parties failed to deny.

Authority: Nevada Civ. Jury Inst. — Evidence 2EV.10 (2011)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

23. EXPERT OPINION

Some witnesses, because of education or experience, are permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

Authority: 9th Cir. Civ. Jury Inst. 2.11 (2007)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

1 **24. EXPERT WITNESS: GENERAL (ALTERNATE)**

2 Witnesses who have special knowledge, skill, experience, training, or education in a
3 particular subject have testified to certain opinions. This type of witness is referred to as an
4 expert witness. In determining what weight to give any opinions expressed by an expert witness,
5 you should consider the qualifications and believability of the witness, the facts or materials upon
6 which each opinion is based, and the reason for each opinion.

7 An opinion is only as good as the facts and reasons on which it is based. If you find that
8 any such fact has not been proved, or has been disproved, you must consider that in determining
9 the value of the opinions. Likewise, you must consider the strengths and weaknesses of the
10 reason on which it is based.

11 You must resolve any conflict in the testimony of the witnesses, weighing each of the
12 opinions expressed against the others, taking into consideration the reasons given for the opinion,
13 the facts relied upon by the witness, his or her relative credibility and his or her special
14 knowledge, skill, experience, training and education.

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16 **Authority: Nevada Civ. Jury Inst. — Expert Witness 3EX.2 (2011)**

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18 Given as Requested: _____

19 Given as Modified: _____

20 Refused: _____

21 Withdrawn: _____

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24 JUDGE OF THE DISTRICT COURT
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An expert witness has testified about [his] [her] reliance upon [books] [treatises] [articles] [statements] that have not been admitted into evidence. Reference by the expert witness to this material is allowed so that the expert witness may tell you what [he] [she] relied upon to form [his] [her] opinions. You may not consider the material as evidence in this case. Rather, you may only consider the material to determine what weight, if any, you will give to the expert's opinions.

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

26. EXPERT WITNESS: HYPOTHETICAL QUESTION

A hypothetical question has been asked of an expert witness. In a hypothetical question, the expert witness is told to assume the truth of certain facts, and the expert witness is asked to give an opinion based upon those assumed facts. You must decide if all of the facts assumed in the hypothetical question have been established by the evidence. You can determine the effect of that admission upon the value of the opinion.

Authority: Nevada Civ. Jury Inst. — Expert Witness 3EX.4 (2011)

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

1 **27. CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE**

2 Certain charts and summaries not received in evidence [may be] [have been] shown to you
3 in order to help explain the contents of books, records, documents, or other evidence in the case.
4 They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts
5 or figures shown by the evidence in the case, you should disregard these charts and summaries
6 and determine the facts from the underlying evidence.

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14 **Authority: 9th Cir. Civ. Jury Inst. 2.12 (2007)**

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16 Given as Requested: _____

17 Given as Modified: _____

18 Refused: _____

19 Withdrawn: _____
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JUDGE OF THE DISTRICT COURT
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1 **28. CHARTS AND SUMMARIES IN EVIDENCE**

2 Certain charts and summaries [may be] [have been] received into evidence to illustrate
3 information brought out in the trial. Charts and summaries are only as good as the underlying
4 evidence that supports them. You should, therefore, give them only such weight as you think the
5 underlying evidence deserves.

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14 **Authority: 9th Cir. Civ. Jury Inst. 1.18 (2007)**

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16 Given as Requested: _____

17 Given as Modified: _____

18 Refused: _____

19 Withdrawn: _____

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22 JUDGE OF THE DISTRICT COURT
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Authority: *Flowers v. Carville*, 310 F. Supp. 2d 1157, 1163 (D. Nev. 2004) (verbatim) (defamation case).

The plaintiff has the burden of proving by a preponderance of the evidence the facts showing

- Authority:** *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (2005); *Rattray v. City of Nat'l City*, 51 F.3d 793, 801 (9th Cir. 1994) (“According to established practice, all elements of a defamation claim, with the exception of actual malice in malice in the case of a public official, must be proved by a preponderance of the evidence.”)

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

1 **32. SPECIAL INSTRUCTION NO 25: PUNITIVE DAMAGES INSTRUCTION**

2 If you find that plaintiff[s] [is] [are] entitled to compensatory damages for actual [harm]
 3 [loss] caused by [the] [a] defendant's breach of an obligation [not arising from a contract], then
 4 you may consider whether you should award punitive damages against [the] [that] defendant.
 5 [The question whether to award punitive damages against a particular defendant must be
 6 considered separately with respect to each defendant.] You may award punitive damages against
 7 [the] [a] defendant only if plaintiff[s] prove[s] by clear and convincing evidence that the wrongful
 8 conduct upon which you base your finding of liability for compensatory damages was engaged in
 9 with fraud, oppression or malice on the part of [the] [that] defendant. You cannot punish [the] [a]
 10 defendant for conduct that is lawful, or which did not cause actual [harm] [loss] to the plaintiff[s].

11 For the purposes of your consideration of punitive damages only:

12 “Fraud” means an intentional misrepresentation, deception or concealment of a material
 13 fact known to a defendant with the intent to deprive the plaintiff[s] of rights or property or to
 14 otherwise injure the plaintiff[s].

15 “Oppression” means despicable conduct that subjects the plaintiff[s] to cruel and unjust
 16 hardship with a conscious disregard of the rights of the plaintiff[s].

17 “Malice” means conduct which is intended to injure the plaintiff[s] or despicable conduct
 18 which is engaged in with a conscious disregard of the rights or safety of the plaintiff[s].

19 “Despicable conduct” means conduct that is so vile, base or contemptible that it would be
 20 looked down upon and despised by ordinary, decent people.

21 “Conscious disregard” means knowledge of the probable harmful consequences of a
 22 wrongful act and a willful and deliberate failure to avoid these consequences.

23 The purposes of punitive damages are to punish a wrongdoer that acts with fraud,
 24 oppression and/or malice in harming a plaintiff and deter similar conduct in the future, not to
 25 make the plaintiff[s] whole for [his] [her] [its] [their] injuries. Consequently, a plaintiff is never
 26 entitled to punitive damages as a matter of right and whether to award punitive damages against
 27 [the] [a] defendant is entirely within your discretion.
 28

Authority: NEVADA JURY INSTRUCTIONS – CIVIL 2011 12PD.1: LIABILITY PHASE

If you find that plaintiff[s] [is] [are] entitled to compensatory damages for actual [harm] [loss] caused by [the] [a] defendant's breach of an obligation [not arising from a contract], then you may consider whether you should award punitive damages against [the] [that] defendant. [The question whether to award punitive damages against a particular defendant must be considered separately with respect to each defendant.]

You may award punitive damages against [the] [a] defendant only if plaintiff[s] prove[s] by clear and convincing evidence that the wrongful conduct upon which you base your finding of liability for compensatory damages was engaged in with fraud, oppression or malice on the part of [the] [that] defendant. You cannot punish [the] [a] defendant for conduct that is lawful, or which did not cause actual [harm] [loss] to the plaintiff[s], [or which occurred and caused [harm] [loss] in other states].

For the purposes of your consideration of punitive damages only:

“Fraud” means an intentional misrepresentation, deception or concealment of a material fact known to a defendant with the intent to deprive the plaintiff[s] of rights or property or to otherwise injure the plaintiff[s].

“Oppression” means despicable conduct that subjects the plaintiff[s] to cruel and unjust hardship with a conscious disregard of the rights of the plaintiff[s].

“Malice” means conduct which is intended to injure the plaintiff[s] or despicable conduct which is engaged in with a conscious disregard of the rights or safety of the plaintiff[s].

“Despicable conduct” means conduct that is so vile, base or contemptible that it would be looked down upon and despised by ordinary, decent people.

“Conscious disregard” means knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to avoid these consequences.

The purposes of punitive damages are to punish a wrongdoer that acts with fraud, oppression and/or malice in harming a plaintiff and deter similar conduct in the future, not to make the plaintiff[s] whole for [his] [her] [its] [their] injuries. Consequently, a plaintiff is never entitled to punitive damages as a matter of right and whether to award punitive damages against [the] [a] defendant is entirely within your discretion.

At this time, you are to decide only whether [the] [one or more] defendant[s] engaged in wrongful conduct causing actual [harm] [loss] to the plaintiff[s] with the requisite state of mind to permit an award of punitive damages against [the] [that] defendant, and if so, whether an award of punitive damages against [the] [that] defendant is justified by the punishment and deterrent purposes of punitive damages under the circumstances of this case. If you decide an award of punitive damages is justified, you will later decide the amount of punitive damages to be awarded, after you have heard additional evidence and instruction.

1 Given as Requested: _____

2 Given as Modified: _____

3 Refused: _____

4 Withdrawn: _____

5 _____
JUDGE OF THE DISTRICT COURT

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For purposes of proving punitive damages, clear and convincing evidence means you must be persuaded by the evidence that the claim or defense is highly probable. This is a higher standard of proof than proof by a preponderance of the evidence. You should base your decision on the evidence, regardless of which party presented it.

Given as Requested: _____

Given as Modified: _____

Refused: _____

Withdrawn: _____

JUDGE OF THE DISTRICT COURT

JOINT UNDISPUTED PROPOSED JURY INSTRUCTIONS

1 Respectfully submitted,

2 Dated: February 5, 2013

MORRISON & FOERSTER LLP

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4 By: William V. O'Connor, Jr.
5 William V. O'Connor, Jr.

6 Attorneys for Defendant
7 ALASKA AIRLINES, INC.
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